



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/08570/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 6 April 2018**

**Determination Promulgated
On 9 April 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**RAYHAN AHMED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Ashraf instructed by JKR Solicitors
For the Respondent: Mr Tufan Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the resumed hearing of the appellants challenge to the respondent's refusal of his application for further leave as a Tier 4 (General) Student Migrant. The date of the decision under challenge is 11 February 2015. Error of law has been found to have been made by the First-tier Tribunal in a decision dated 13 September 2017.

Discussion

2. The error of law finding identified a number of problems with the respondent's decision. Attempts to shed light upon what has occurred in relation to this matter, since the error of law finding, have not

proved successful and the Tribunal is grateful to Mr Tufan for enquiries he has undertaken and his contribution. The key matter arising is that the Secretary of State has no further evidence to prove that the curtailment decision was lawfully served upon the appellant. The appellant's evidence that he was not served with the curtailment letter dated 21 September 2013 is therefore taken as the unchallenged position representing what has occurred, and therefore the basis on which merits of this matter need to be assessed.

3. Although the curtailment letter was eventually sent by first-class post to the appellant's residential address, on 10 December 2013, it was found that the service was invalid.
4. As the appellant was granted leave to 31 October 2014 an application made on 12 March 2014, which led to the refusal under challenge of the February 2015, must have been an 'in time' application which entitled the appellant to a right of appeal. In that respect the impugned decision is legally incorrect when asserting the appellant did not have a right of appeal.
5. The appellant's case is that he should also have been given a further sixty days to enable him to find another college in light of the fact that the CAS issued by the London Guildhall College was not accepted by the decision-maker on the basis that the College was no longer on the sponsorship register at the date the register was checked. The appellant asserts the respondent's actions have been procedurally unfair as his leave was not and has never been lawfully curtailed.
6. This position was not disputed by either advocate and the question of how the Upper Tribunal should deal with this matter, in light of the Immigration Act 2014 amendments to the grounds of appeal, occupied most of the hearing. Pre- Immigration Act 2014 where an error has been made by the Secretary State of this nature the finding would be that the decision is 'not in accordance with the law' but as found in *Charles (human rights appeal: scope) [2018] UKUT 00089 (IAC)*, following the amendments to ss.82, 85 and 86 of 2002 Act by the Immigration Act 2014 it is no longer possible for the Tribunal to allow an appeal on the ground that a decision is 'not in accordance with the law'.
7. The answer lies in the chronology. The Immigration Act 2014 had with it saving provisions to protect certain persons who had rights of appeal at the time they applied for leave to enter or remain, see Immigration Act 2014 (Commencement No. 4, Transitional and Saving Provisions and Amendments) Order 2015. These provide that appeal rights continue to exist for decisions made on or after 6 April 2015 where an application was made before 20 October 2014 for leave to remain as a Tier 4 Migrant or their family. In this appeal the application for further leave as a Tier 4 (General) Student Migrant was made on 12 March 2014. The decision under challenge is dated 11 February 2015 and the appeal to the First-tier Tribunal lodged on 2 March 2015; prior to the commencement date of the revised rights of appeal introduced by the Immigration Act 2014.
8. The previous grounds of appeal included a finding that the decision was not in accordance with the law. It was accepted that if this ground remained it was an appropriate ground on which the appeal should be

allowed and, in accordance with the transitional provisions, I allow the appeal to the extent the respondents decision is not in accordance with the law and that a lawful decision is awaited.

9. In the alternative, if the appellant had been restricted to the more limited grounds introduced by the Immigration Act 2014 it would have been necessary to consider whether he was able to succeed on the basis the decision was unlawful under section 6 Human Rights Act 1998. In this case there is no removal direction and so the issue would be whether a hypothetical removal or requirement to leave would be contrary to Article 8 (private and family life). On the basis of the flawed decision and impact upon the appellants private life it is arguable it is until a proper decision on the application has been made.

Decision

10. **I remake the decision as follows. This appeal is allowed.**

Anonymity.

11. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 6 April 2018